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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,919	08/06/2003	Claudius Zeiler	A8130.0659/P659	8849
24998 7590 03/25/2010 DICKSTEIN SHAPIRO LLP 1825 EYE STREET NW Washington, DC 20006-5403				
EXAMINER NELSON, CHRISTINE L.				
ART UNIT		PAPER NUMBER		
3775				
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03/25/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/635,919

Applicant(s)

ZEILER ET AL.

Examiner

CHRISTINE L. NELSON

Art Unit

3775

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-19, 21, 22 and 29-34 is/are pending in the application.
- 4a) Of the above claim(s) 17-19, 21 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 10, 2009 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29 – 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Esser (US Patent Number 6,096,040) in view of Bailey (US Patent Number 5,607,430).

Regarding Claim 29, Esser discloses a plate member having an edge defining a head-end portion shaped to bear against a surface of a bone and a shaft-end portion shaped to bear against a surface of a bone (Figures 3-5 and column 5, lines 52-64), the shaft-end portion being narrower along a lateral direction than the head-end portion (Figure 3), and the plate member edge delineating a bone facing surface to bear against the bone and an opposing side surface facing away from the bone (Figures 3-5). Esser

further discloses a plurality of holes for bone screws on each of the head-end portion and the shaft-end portion for fixing the plate member to the bone surfaces (Figure 2 and column 5, lines 32-36).

Esser does not disclose at least one discrete receiving member protruding from the opposing side surface, located at the head-end portion, and proximate to the edge, each member defining a substantially circular and circumferentially enclosed aperture through which flexible members may be passed through and tightened after the plate member has been secured to the bone surfaces, an edge circumference of each aperture having a distal curved section spaced further from the opposing side surface than a proximal curve section. However, Bailey does teach at least one discrete receiving member protruding from the opposing side surface (Figure 1, 18 "bosses"), located at the head-end portion, and proximate to the edge, each member defining a substantially circular and circumferentially enclosed aperture (embodiment in Figure 7) through which flexible members may be passed through and tightened after the plate member has been secured to the bone surfaces (Column 4, lines 6-23), an edge circumference of each aperture having a distal curved section spaced further from the opposing side surface than a proximal curve section (Figure 3, 22 "openings").

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the "bosses" for holding a cable in place to further secure a bone plate as disclosed in Bailey with the shape and configuration of the bone plate for use with long bones as disclosed in Esser. The adaption of bosses to hold

cabling and further secure a bone plate is applicable to any bone plate where additional fixation support would be beneficial.

Regarding Claims 30 and 33, Esser discloses an implant plate with a thickness of the plate member between 0.8 and 3.5 mm with a substantially uniform thickness between 0.5 and 6.5mm (Column 6, lines 4-6).

Regarding Claim 31, Esser discloses an implant plate where the plate member is of titanium alloy (Column 6, lines 12-13).

Regarding Claim 32, Esser discloses an implant plate where the plate member has a slight curvature to the head-end portion and the shaft-end portion to bear against the outer surfaces of the bone (Column 5, lines 52-64).

Regarding Claim 34, Esser does not disclose a plurality of discrete receiving members each protruding from the opposing side surface and located at the head-end portion, proximate to the edge. However, Bailey teaches a plurality of discrete receiving members each protruding from the opposing side surface and located at the head-end portion, proximate to the edge (Figure 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the "bosses" for holding a cable in place to further secure a bone plate as disclosed in Bailey with the shape and configuration of the bone plate for use with long bones as disclosed in Esser. The adaption of bosses to hold cabling and further secure a bone plate is applicable to any bone plate where additional fixation support would be beneficial. A plurality of bosses would further enhance the securing ability of the invention.

Response to Arguments

Applicant's arguments with respect to claims 29-34 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Orbay (US Patent Number 6,358,250 B1) discloses a bone implant with a head wider than the shaft and with a consistent thickness that is made of a titanium alloy.

Judet (US Patent Number 4,263,904) discloses a osteosynthesis device with a discrete receiving member)

Corsi et al (US Patent Number 5,190,545) discloses a cerclage wire positioning insert for use with a bone plate.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTINE L. NELSON whose telephone number is (571)270-5368. The examiner can normally be reached on Monday through Friday 7:30 to 5:00 - first Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas C. Barrett can be reached on (571)272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CHRISTINE L. NELSON/
Examiner, Art Unit 3775

/Thomas C. Barrett/
Supervisory Patent Examiner, Art
Unit 3775